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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
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June 23, 2017

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Thomas Napack
J.S.I.D. File #16-0503
L.A.S.D. File #016-04979-6637-056

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 4, 2016, non-fatal shooting of Thomas Napack. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Vincent Cisneros, #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Thomas Napack
J.S.I.D. File #16-0503
L.A.S.D. File #016-04979-6637-056

DATE: June 23, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 4, 2016, non-fatal shooting of Thomas Napack by Los Angeles County Sheriff's Department (LASD) Deputy Vincent Cisneros. It is our conclusion that Deputy Cisneros acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on October 4, 2016, at approximately 1:58 p.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on investigative reports submitted to this office by LASD Sergeant Guillermo Morales and Detective Steve Blagg. The reports include witness statements, photographs, and videos. The voluntary statement of Deputy Cisneros was considered in this analysis.

FACTUAL ANALYSIS

On October 4, 2016, at approximately 12:55 p.m., LASD Deputies Vincent Cisneros and Russell Helbing were in full LASD uniform assigned to the Transit Policing Division, patrolling the Santa Monica Metro station.[1] Cisneros and Helbing were standing on the south side of the platform area next to the handicap/emergency exit gate when a man, later identified as Thomas Napack, aggressively approached them carrying a knife in each hand. When he was about five feet from Helbing, Napack attempted to stab Helbing in the abdomen, but failed to make contact. Simultaneously, Napack attempted to stab Cisneros with a second knife he held in his left hand.

[1] Both deputies were dressed in a Sheriff's Class B uniform with an external bullet resistant vest with Sheriff's Department markings on the front and back.

Fearing for his life and that of Helbing, Cisneros fired one round at Napack from his service weapon, striking Napack on his lower left flank area.[2]

Napack was transported to the University of California Los Angeles Medical Center (UCLA Medical Center) for medical treatment. On October 8, 2016, Napack was discharged into the custody of LASD and booked on two counts of attempted murder in violation of Penal Code section 664/187(a), and two counts of assault with a deadly weapon, in violation of Penal Code section 245(c).[3]

Statement of Deputy Russell Helbing[AA1]

On October 4, 2016, at approximately 11:30 a.m., Helbing was assigned, along with Cisneros, to the Transit Policing Division, patrolling the Santa Monica Metro station for LASD. Helbing and Cisneros were on foot patrol on the passenger station and platform area. As they were standing near the south turnstiles on the platform, Helbing saw Napack walking toward him at a fast pace. When Napack was approximately five feet from him, Helbing saw that Napack was holding a knife in his right hand, at waist level, with the blade pointing away from Napack's body. The knife was a kitchen style knife with a black handle and an approximate three-inch silver blade. Napack lunged at Helbing with the knife and attempted to stab him in the stomach area.[4] Helbing grabbed Napack's right wrist and covered his hand with his right hand in an attempt to control the knife. Helbing was about to take Napack to the ground by sweeping his legs, when he saw that Napack was holding another kitchen-style knife, with an approximate six-inch blade, in his left hand. Using the knife in his left hand, Napack attempted to stab Cisneros who was standing approximately two to three feet away. Napack appeared to have a blank look on his face and did not say anything to them, either before or after the attack.

Fearing for his and Cisneros' safety, Helbing pushed Napack away and drew his service weapon. Helbing then heard Cisneros fire one round from his service weapon and saw Napack fall to the ground, dropping both knives. Helbing held Napack at gunpoint as he broadcast via his handheld radio that he and Cisneros had been involved in a shooting, and requested the fire department and additional units respond to their location. Helbing and Cisneros handcuffed Napack and turned him onto his side. Helbing rendered first aid to Napack until the arrival of Santa Monica Police officers.

Statement of Deputy Vincent Cisneros

Cisneros was facing west and Helbing was facing east while they were standing on the south side of the platform near the emergency exit. Cisneros was approximately five feet from Napack, when he first saw Napack running toward Helbing. Napack had a knife in his right hand with the blade of the knife pointed away from his body. When he was approximately two feet from Helbing, Napack lunged at Helbing with the knife. Cisneros was under the impression that Napack had stabbed Helbing in the chest or stomach.[5] Although Cisneros knew that Helbing

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[2] Cisneros was armed with a Sig Sauer .45 caliber semiautomatic pistol.
[3] Napack's case, court case number SA094120, is currently set for preliminary hearing setting on June 14, 2017.
[4] The knife failed to make contact with Helbing's body, and Helbing was not injured.
[5] Unbeknownst to Cisneros, Helbing was uninjured.

was wearing an external bullet resistant vest, he also knew that the vest was not resistant to a sharp object, such as a knife. Helbing held Napack's right hand with both of his hands, but Napack was struggling to break free of Helbing's grasp. Cisneros attempted to grab Napack to assist, when Cisneros noticed Napack was holding a larger knife in his left hand with the blade up and aimed toward him. Fearing that Napack was about to stab him or Helbing with the second knife, Cisneros stepped back from Napack, drew his duty weapon and fired one round at Napack, who was about five to ten feet to Cisneros' right. Napack fell to the ground and dropped both knives. Upon handcuffing Napack, Cisneros observed that Napack was bleeding from a wound to his lower back.

Statement of [redacted]

[redacted] exited a train when he noticed Cisneros and Helbing standing off to his left on the south side of the platform, near the station's turnstiles. [redacted] was on the staircase on the north side of the station when he observed Napack approaching Cisneros and Helbing with a knife in his right hand. The knife had a black handle and a four-inch blade. Napack was holding the knife with his hands down by his side and with the blade protruding out in front of his body. Napack walked aggressively toward Cisneros and Helbing. It appeared as if Napack was "going to harm the officers." When Napack was approximately five to eight feet from Cisneros and Helbing, Cisneros drew his service weapon and fired one round at Napack. Napack fell to the ground on his back. [redacted] then observed a knife on the ground. Cisneros and Helbing held Napack at gunpoint, handcuffed him, and rendered aid to him until other officers arrived to assist.

Statement of Thomas Napack

Napack was interviewed per *Miranda* on two separate occasions. During his first interview, on October 4, 2016, while at the UCLA Medical Center, Napack admitted that he "attacked" a police officer with a knife. Napack stated that he did so because he wanted to go to jail and "so that the full extent of the law would come down on me." Napack knew he was attacking a police officer because "they were in uniform." Napack stated he was trying to die. Napack added, "I wanted to get shot. I didn't have anything to live for. I can't get into a homeless shelter. I just want to die."

During his second interview on October 16, 2016, while in custody in the jail, Napack provided additional details. Napack is a musician originally from the Washington, D.C. area. Napack had been in a mental hospital in Tennessee approximately three weeks prior to the incident and had been diagnosed with schizoaffective disorder.[6] He was prescribed medication, but had not taken any since leaving the hospital.

On the date of the incident, Napack had arrived at the Santa Monica Metro station from the Downtown Metro station in Los Angeles. Napack stated that he rode the train back and forth a couple of times so he could find a police officer. Upon exiting the train in Santa Monica, Napack saw two officers standing near the turnstiles. These were the first officers Napack

[6] Schizoaffective disorder is a mental disorder characterized primarily by symptoms of schizophrenia, such as hallucinations or delusions, and symptoms of a mood disorder, such as mania and depression.

encountered that day.[7] Napack knew they were police officers because they were wearing uniforms. Napack walked up to the two officers armed with a knife in each hand.[8] The knives were kitchen style knives with black handles. When he got close, Napack pointed the knife at one officer and "came at him," but does not remember if he lunged at the officer. Napack was then shot one time by an officer. Napack admitted he attacked the officers because, "I was trying to get killed." Napack felt he had nothing to live for because he was homeless and had nowhere to live. Napack stated, "I just didn't have any options. It's cold in the streets." Napack had tried to get arrested the day prior by exposing himself on the Santa Monica Pier, but although he was arrested, he was cited and released a few hours later.[9] While admitting he understood he could have hurt the officers, Napack denied he wanted to kill the officer. Napack stated, "I would definitely not have stabbed the officer if he didn't shoot me." Napack added that he has a guardian angel, "Nina," who speaks to him and told him to do what he did with the knives. Napack denied using any controlled substances or consuming alcohol prior to the incident, stating he was "completely sober" when he did this.[10] Napack stated that he was happy he had not hurt anyone, but felt bad "because it had to come to this to have somewhere to live."

Physical Evidence

Surveillance video footage was obtained from the Metropolitan Transit Authority (MTA) Santa Monica Metro station and from nearby locations. A video from the MTA shows Napack walking on the platform at approximately 12:54 p.m. with a knife in each hand.

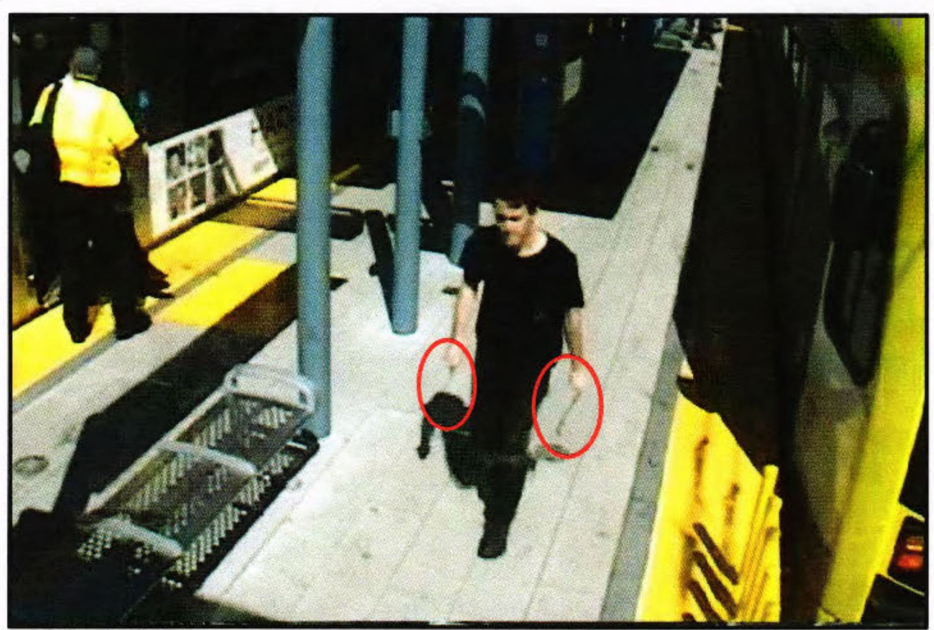
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[7] Napack stated he specifically chose the Santa Monica train station because he had been to that location in the past and had seen police officers who usually stood in the area near the turnstiles.

[8] Napack admitted he specifically stole the knives that morning from a "Walgreens" in downtown Los Angeles near Figueroa Avenue, in order to use them to attack the officers. Investigators were able to locate video footage of Napack at the aforementioned Walgreens location.

[9] Investigators obtained the Santa Monica Police Department Incident Report [redacted] Per the Incident Report, Napack was observed walking completely naked on the pier with his clothes neatly rolled and tucked under his arm as he walked. Napack informed the arresting officers that he was in perfect health and in no need of psychiatric help.

[10] Napack's blood was drawn approximately three hours after being admitted to the UCLA Medical Center. A toxicology examination performed at the hospital was negative for any controlled substances. (A positive result for opiates was likely the result of pain control medication administered to Napack while at the hospital.)



Napack Walking on the Platform While Holding a Knife in Each Hand

Another video, from a different camera view, captured Napack lunging at the deputies. Napack is seen attempting to stab Helbing with the knife in his right hand, while directing the knife in his left hand toward Cisneros as Cisneros reaches for his service weapon. The video then appears to capture Cisneros as he fires in Napack's direction, who is by then out of the camera view. Video footage obtained from two other cameras captured Napack falling to the ground.[11]



Napack Attempting to Stab Helbing While Aiming Another Knife at Cisneros

[11] The MTA surveillance video footage does not contain audio.

Napack was armed with two knives, both with black plastic handles, which were recovered from the scene. One knife had approximately a five-inch blade, while the other knife had approximately a three-inch blade.




Knives Recovered from the Scene

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death.[12] *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.[13]

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that Deputies Cisneros and Helbing were patrolling the Santa Monica train station on foot, when they were suddenly approached by Napack who was armed with a knife in each hand. Witness [redacted] noted that Napack aggressively approached the deputies and it appeared that he was "going to harm the officers." Napack lunged at Helbing, attempting to stab him, while aiming a second knife at Cisneros. Fearing for his life, and that of Helbing whom he believed had been stabbed, Cisneros fired his service weapon once at Napack, striking him on the lower left flank.

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[12] Penal Code section 197 and CALCRIM No. 505.

[13] CALCRIM No. 3470.

Napack initially admitted to investigators that he intentionally targeted police officers to assault because he wanted to get killed. Napack stated, "I assaulted a police officer with two knives" because "I was trying to get killed." Although Napack later stated that he did not want to harm the officers, the evidence shows that he formulated a plan; which entailed him stealing two knives that morning in preparation, and then deliberately boarding the train in search of police officers to assault. Further, he did just as planned - assault the officers with two knives – immediately upon encountering Cisneros and Helbing at the station, where he knew from past experience they would be. In light of Napack's dangerous, albeit desperate actions, Cisneros' response with deadly force in self-defense and in defense of Helbing, was reasonable and lawful.

CONCLUSION

For the foregoing reasons, we conclude that Deputy Vincent Cisneros acted lawfully in self-defense and defense of others when he used deadly force against Thomas Napack. We are therefore closing our file and will take no further action in this matter.